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EXAMINER	
HAND, MELANIE JO	
ART UNIT	PAPER NUMBER
3761	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/600,061	LINA ET AL.	
	Examiner	Art Unit	
	MELANIE J. HAND	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *24 March 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-19 and 21-30* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-19 and 21-30* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *7/23/09*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 1-19 and 21-30 have been considered but are moot in view of the new ground(s) of rejection prompted by applicant's submission of an information disclosure statement.

Information Disclosure Statement

2. The information disclosure statement (IDS) submitted on July 23, 2009 was filed after the mailing date of the non-final action on December 12, 2008. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 10 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Solovev.

With respect to **claim 10:** Solovev discloses a wound dressing for facilitating the healing of a wound in mammals comprising the following: a porous body adapted to be positioned in contact with the wound and to be fluidly coupled to a suction pump for providing a negative pressure to

the wound, said porous body having an outer surface and an inner body, the outer surface being adapted for contact with the wound and having pores therein of a first average size, the inner body having pores of a second average size, wherein the second average size is greater than the first average size. (Figs. 1, 2, Page 5, ¶1 – Page 6, ¶1) Solovev's disclosure of adhesive applied to an upper wall of the foam is interpreted by examiner as necessarily referring to the wall(s) contacting the wound cavity 'walls' to seal the cavity. The adhesive thus forms an outer surface that has a first porosity that would necessarily be less than the porosity of the foam, i.e. the first average pore size in the adhesive coating would be les than the second average pore size in the foam body. The apparatus of Solovev also comprises and a drape in the form of an antiseptic dressing adapted to cover said porous body and the wound for providing a seal to contain the negative pressure. Examiner's position regarding whether the antiseptic dressing of Solovev meets the limitation of a drape is supported by Solovev's disclosure that the foam does not need to be sealed to the periphery of the wound outside the cavity because of securement provided by said antiseptic dressing. In order for the dressing to provide such securement it must therefore be adapted to cover the porous pad and be sealed in a manner that prevents motion of the pad during suction application.

With respect to **claim 13:** The outer surface and the inner body disclose by Solovev are joined together to form a unitary assembly inasmuch as the outer surface is formed by applying an adhesive to the surface of the pad and the inner body is a component of, and is defined by, the porous pad. (Page 5, ¶1)

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claim 11 is rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Solovev.

With respect to **claim 11:** The limitation of claim 8 is directed to product-by-process claim language which bears little patentable weight in an apparatus claim. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." *In re Thorpe, 777 F.2d 695, 227 USPQ 964 (Fed. Cir. 1985). See also MPEP § 2113.* The burden shifts to applicant to come forward with evidence establishing an unobvious difference between the claimed product and

the prior art product. *In re Marosi*, 710 F.2d 798, 802, 218 USPQ 289, 292 (Fed. Cir. 1983) Solovev discloses a foam porous pad, which is identical to a porous foam pad formed by spraying a foaming substance as required by claim 8. Thus, though Solovev does not disclose that the pad is formed by spraying a substance in the manner required in claim 11, it would be obvious to one of ordinary skill in the art to modify the apparatus of Solovev such that the foam porous pad is replaced with a pad that is formed by spraying a nontoxic chemical substance into the wound whereby said chemical substance foams up to conform to the dimensions of the wound with a reasonable expectation of success to provide an equally effective vacuum-compatible wound drainage pad.

8. Claims 1-4, 7-9, 12, 14, 15, 17, 21-24 and 28-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Solovev in view of Bowen (U.S. Patent No. 5,827,246).

With respect to **claim 1:** Solovev discloses a therapeutic apparatus for stimulating healing of a wound in mammals comprising the following: a suction pump for providing a negative pressure to be applied to the wound (Page 6, ¶3); a porous pad in the form of a rectangular piece of polyurethane foam adapted to be positioned in contact with the wound and to be fluidly coupled to said suction pump for distributing the negative pressure to the wound, said porous pad including a porous body having an outer surface and an inner body, a portion of the outer surface being adapted for contact with the wound and having pores therein of a first average size, and the inner body having pores therein of a second average size, wherein the second average size is greater than the first average size inasmuch as the pores on the surface contacting the wound are at least partially occluded by adhesive that seals the purulent wound cavity (Page 5, ¶1 – Page 6, ¶1), wherein Solovev's disclosure of adhesive applied to an upper

wall of the foam is interpreted by examiner as necessarily referring to the wall(s) contacting the wound cavity 'walls' to seal the cavity. The adhesive thus forms an outer surface that has a first porosity that would necessarily be less than the porosity of the foam, i.e. the first average pore size in the adhesive coating would be les than the second average pore size in the foam body. The apparatus disclosed by Solovev also comprises a drape in the form of an antiseptic dressing that is necessarily adapted to cover said porous pad and the wound for providing a seal to contain the negative pressure (Page 5, ¶5). Examiner's position regarding whether the antiseptic dressing of Solovev meets the limitation of a drape is supported by Solovev's disclosure that the foam does not need to be sealed to the periphery of the wound outside the cavity because of securement provided by said antiseptic dressing. In order for the dressing to provide such securement it must therefore be adapted to cover the porous pad and be sealed in a manner that prevents motion of the pad during suction application.

Solovev discloses gastrointestinal fluids collected from such a pad that are recirculated back to the patient via drop infusion, thereby suggesting a canister. Solovev does not explicitly disclose a vacuum canister fluidly connected between said porous pad and said suction pump for collecting fluids drawn from the wound through said porous pad to said vacuum canister by the negative pressure. Bowen teaches a porous pad 40 (Fig. 2) that is permeable to liquids including a porous body 44 having at least a partial outer surface and an inner body and a vacuum canister 28 for collecting fluids sucked from said wound by a negative pressure source 32 connected to said porous pad 40 through a drainage tube 30. Since the device of Bowen seeks to solve a similar problem in the art to that with which the applicant is concerned, it would be obvious to one of ordinary skill in the art to modify the device of Solovev so as to comprise a vacuum canister fluidly connected between said porous pad and said suction pump as disclosed

by Bowen for collecting fluids drawn from the wound through said porous pad to said vacuum canister by the negative pressure.

With respect to **claim 2:** The porous pad disclosed by Solovev has an elongated hole to accommodate a drainage tube fluidly connecting the vacuum pump to the porous pad, created when the tube is inserted into the foam. (Fig. 1, Page 5, ¶3) Solovev does not disclose a vacuum canister fluidly connected between said porous pad and said suction pump for collecting fluids drawn from the wound through said porous pad to said vacuum canister by the negative pressure. Bowen discloses such a vacuum canister fluidly connected between a porous pad and a vacuum source. The motivation to modify the device of Solovev so as to comprise a vacuum canister connected in the manner claimed and disclosed by Bowen is stated *supra* with respect to claim 1. The device of Solovev as modified by Bowen thus renders the limitation of an elongated hole to accommodate a drainage tube fluidly connecting a vacuum canister to the porous pad is stated *supra* with respect to claim 2.

With respect to **claim 3:** The pores of the second average size disclosed by Solovev are necessarily vacuum-compatible as Solovev discloses that the pad with said pores assist in drainage by connection to a vacuum drainage tube. (Figs. 1,2, Page 5, ¶3)

With respect to **claim 4:** The porous pad disclosed by Solovev is fabricated from polyurethane foam.

With respect to **claim 7:** Solovev discloses an antiseptic dressing holding the porous pad in place in the wound cavity thus it is examiner's position that the apparatus of Solovev further comprises an antimicrobial agent in contact with said porous pad. (Page 5, ¶5)

With respect to **claim 8:** It is noted that the limitation of claim 8 is directed to product-by-process claim language which bears little patentable weight in an apparatus claim. Solovev discloses a foam porous pad, which is identical to a porous foam pad formed by spraying a foaming substance as required by claim 8. Thus, though Solovev does not disclose that the pad is formed by spraying a substance in the manner required in claim 8, it would be obvious to one of ordinary skill in the art to modify the apparatus of Solovev such that the foam porous pad is replaced with a pad that is formed by spraying a nontoxic chemical substance into the wound whereby said chemical substance foams up to conform to the dimensions of the wound with a reasonable expectation of success to provide an equally effective vacuum-compatible wound drainage pad.

With respect to **claim 9:** It is noted that the limitation of claim 8 is directed to product-by-process claim language which bears little patentable weight in an apparatus claim. Solovev discloses that the pores of the first average size are formed by applying adhesive in coating form. Solovev does not disclose that the pores of the first average size are formed by placing said porous pad in a liquid coating material. However, since the resulting pad disclosed by Solovev formed in the manner recited in claim 9 would yield a structurally and functionally identical porous pad to that disclosed by Solovev, it would be obvious to one of ordinary skill in the art to modify the apparatus of Solovev such that the foam porous pad is replaced with a pad wherein the pores of the first average size are formed by placing said porous pad in a liquid coating material with a

reasonable expectation of success to provide an equally effective vacuum-compatible wound drainage pad.

With respect to **claim 12:** The outer surface and the inner body disclose by Solovev are joined together to form a unitary assembly inasmuch as the outer surface is formed by applying an adhesive to the surface of the pad and the inner body is a component of, and is defined by, the porous pad. (Page 5, ¶1)

With respect to **claims 14,15:** Solovev does not disclose that said seal is air-tight. Bowen teaches that the seal around the wound site is substantially airtight via polyurethane base adhesive, wherein polyurethane is air-impermeable. ("913, Col. 3, lines 24-26). Since the device of Bowen seeks to solve a similar problem in the art to that with which the applicant is concerned, it would be obvious to one of ordinary skill in the art to modify the device of Solovev so as to comprise a drape providing a seal that is air-tight as disclosed by Bowen to prevent fluids and air from leaking that would impair the function of the vacuum drainage of fluids from the wound cavity.

With respect to **claim 17:** Solovev does not disclose a vacuum canister and thus does not disclose a pump that is connected to said canister through a hose. Bowen teaches that a suction pump 32 is adapted to draw liquid from a sealed porous pad 40 through a drainage conduit 30 and into a vacuum canister 28 ('246, Col. 4, lines 22-28). The motivation to modify the apparatus of Solovev such that a vacuum canister is disposed between the porous pad and pump is stated *supra* with respect to claim 1.

With respect to **claim 21:** Solovev discloses a therapeutic apparatus for stimulating healing of a wound in mammals comprising the following: a suction pump for providing a negative pressure to be applied to the wound (Page 6, ¶3); a porous body fluidly coupled to a suction pump for providing a negative pressure to the wound, said porous body having an outer surface and an inner body, the outer surface being adapted for contact with the wound and having pores therein of a first average size, the inner body having pores of a second average size, wherein the second average size is greater than the first average size (Figs. 1, 2, Page 5, ¶1 – Page 6, ¶1), wherein Solovev's disclosure of adhesive applied to an upper wall of the foam is interpreted by examiner as necessarily referring to the wall(s) contacting the wound cavity 'walls' to seal the cavity; a drape in the form of an antiseptic dressing that is necessarily adapted to cover said porous pad and the wound for providing a seal to contain the negative pressure (Page 5, ¶5). Examiner's position regarding whether the antiseptic dressing of Solovev meets the limitation of a drape is supported by Solovev's disclosure that the foam does not need to be sealed to the periphery of the wound outside the cavity because of securement provided by said antiseptic dressing. In order for the dressing to provide such securement it must therefore be adapted to cover the porous pad and be sealed in a manner that prevents motion of the pad during suction application.

Solovev discloses gastrointestinal fluids collected from such a pad that are recirculated back to the patient via drop infusion, thereby suggesting a canister. Solovev does not explicitly disclose a vacuum canister fluidly connected between said porous pad and said suction pump for collecting fluids drawn from the wound through said porous pad to said vacuum canister by the negative pressure. Solovev discloses gastrointestinal fluids collected from such a pad that are recirculated back to the patient via drop infusion, thereby suggesting a canister. Solovev does not explicitly disclose a vacuum canister fluidly connected between said porous pad and

said suction pump for collecting fluids drawn from the wound through said porous pad to said vacuum canister by the negative pressure. Bowen teaches a porous pad 40 (Fig. 2) that is permeable to liquids including a porous body 44 having at least a partial outer surface and an inner body and a vacuum canister 28 for collecting fluids sucked from said wound by a negative pressure source 32 connected to said porous pad 40 through a drainage tube 30. Since the device of Bowen seeks to solve a similar problem in the art to that with which the applicant is concerned, it would be obvious to one of ordinary skill in the art to modify the device of Solovev so as to comprise a vacuum canister fluidly connected between said porous pad and said suction pump as disclosed by Bowen for collecting fluids drawn from the wound through said porous pad to said vacuum canister by the negative pressure.

With respect to **claim 22:** The pores of the second average size disclosed by Solovev are necessarily vacuum-compatible as Solovev discloses that the pad with said pores assist in drainage by connection to a vacuum drainage tube. (Figs. 1,2, Page 5, ¶3)

With respect to **claim 23:** The porous pad disclosed by Solovev is fabricated from polyurethane foam.

With respect to **claim 24:** It is noted that the limitation of claim 24 is directed to product-by-process claim language which bears little patentable weight in an apparatus claim. Solovev discloses that the pores of the first average size are formed by applying adhesive in coating form. Solovev does not disclose that the pores of the first average size are formed by placing said porous pad in a liquid coating material. However, since the resulting pad disclosed by Solovev formed in the manner recited in claim 9 would yield a structurally and functionally

identical porous pad to that disclosed by Solovev, it would be obvious to one of ordinary skill in the art to modify the apparatus of Solovev such that the foam porous pad is replaced with a pad wherein the pores of the first average size are formed by placing said porous pad in a liquid coating material with a reasonable expectation of success to provide an equally effective vacuum-compatible wound drainage pad.

With respect to **claim 28:** Solovev does not disclose that said seal is air-tight. Solovev does not disclose that said seal is air-tight. Bowen teaches that the seal around the wound site is substantially airtight via polyurethane base adhesive, wherein polyurethane is air-impermeable. ("913, Col. 3, lines 24-26). Since the device of Bowen seeks to solve a similar problem in the art to that with which the applicant is concerned, it would be obvious to one of ordinary skill in the art to modify the device of Solovev so as to comprise a drape providing a seal that is air-tight as disclosed by Bowen to prevent fluids and air from leaking that would impair the function of the vacuum drainage of fluids from the wound cavity.

With respect to **claim 29:** It is noted that the limitation of claim 29 is directed to product-by-process claim language which bears little patentable weight in an apparatus claim. Solovev discloses a foam porous pad, which is identical to a porous foam pad formed by spraying a foaming substance as required by claim 8. Thus, though Solovev does not disclose that the pad is formed by spraying a substance in the manner required in claim 29, it would be obvious to one of ordinary skill in the art to modify the apparatus of Solovev such that the foam porous pad is replaced with a pad that is formed by spraying a nontoxic chemical substance into the wound whereby said chemical substance foams up to conform to the dimensions of the wound with a reasonable expectation of success to provide an equally effective vacuum-compatible wound

drainage pad.

With respect to **claim 30:** The outer surface and the inner body disclose by Solovev are joined together to form a unitary assembly inasmuch as the outer surface is formed by applying an adhesive to the surface of the pad and the inner body is a component of, and is defined by, the porous pad. (Page 5, ¶1)

9. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Solovev in view of Bowen as applied to claim 8 above, and further in view of Coffee (U.S. Patent No. 6,252,129).

With respect to **claims 18:** It is noted that the limitation of claims 18 and 19 are directed to product-by-process claim language which bears little patentable weight in an apparatus claim. Solovev does not disclose or suggest a nontoxic chemical substance for forming the porous pad that is at least partially a gas. Coffee teaches spraying a nontoxic polymeric flexible foam deposit into a wound to form a cavity wound dressing, with the dressing conforming to the contours of a cavity wound (‘129, Col. 13, lines 52-55). It would be obvious to further modify the apparatus of Solovev such that the porous pad is formed by spraying a nontoxic chemical substance into the wound as taught by Coffee. The nontoxic chemical substance disclosed by Solovev as modified by Bowen and as further modified by Coffee is at least partially a gas inasmuch as the substance disclosed by Coffee contains a gas propellant. (‘129, Col. 1, lines 14-22)

10. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Solovev in view of Coffee (U.S. Patent No. 6,252,129).

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With respect to **claim 19:** It is noted that the limitation of claims 18 and 19 are directed to product-by-process claim language which bears little patentable weight in an apparatus claim. Solovev does not disclose or suggest a nontoxic chemical substance for forming the porous pad that is at least partially a gas. Coffee teaches spraying a nontoxic polymeric flexible foam deposit into a wound to form a cavity wound dressing, with the dressing conforming to the contours of a cavity wound and discloses that such a substance is known. ('129, Col. 1, lines 14-17, Col. 13, lines 52-55) It would be obvious to further modify the apparatus of Solovev such that the porous pad is formed by spraying a nontoxic chemical substance into the wound as taught by Coffee. The nontoxic chemical substance disclosed by Solovev as modified by Coffee is at least partially a gas inasmuch as the known substance disclosed by Coffee contains a gas propellant. ('129, Col. 1, lines 14-22)

11. Claims 6, 26 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Solovev in view of Bowen, as applied to claims 1 and 21 above, and further in view of Podell et al (U.S. Patent No.5,419,913).

With respect to **claim 6:** Solovev does not disclose that the drape is made from an elastomeric material. Bowen also does not disclose such a material. Podell teaches a surgical drape comprised of a flexible elastomeric material. Since the drape and device of Podell as a whole seek to solve a similar problem in the art to that with which applicant is concerned (i.e. providing a wound dressing sealed and protected from the ambient environment), it would be obvious to one of ordinary skill in the art to modify the device of Solovev as modified by Bowen such that the antiseptic dressing functioning in an identical manner to a surgical drape is made from an

elastomeric material as disclosed by Podell with a reasonable expectation of success to provide a drape that can be stretched to provide a proper seal and fit to the wound area.

With respect to **claim 26:** The apparatus of Solovev further comprises a drape in the form of an antiseptic dressing that is necessarily adapted to cover said porous pad and the wound for providing a seal to contain the negative pressure (Page 5, ¶5). Examiner's position regarding whether the antiseptic dressing of Solovev meets the limitation of a drape is supported by Solovev's disclosure that the foam does not need to be sealed to the periphery of the wound outside the cavity because of securement provided by said antiseptic dressing. In order for the dressing to provide such securement it must therefore be adapted to cover the porous pad and be sealed in a manner that prevents motion of the pad during suction application.

Solovev does not disclose that the drape is made from an elastomeric material. Bowen also does not disclose such a material for a surgical drape. Podell teaches a surgical drape comprised of a flexible elastomeric material. Since the drape and device of Podell as a whole seek to solve a similar problem in the art to that with which applicant is concerned (i.e. providing a wound dressing sealed and protected from the ambient environment), it would be obvious to one of ordinary skill in the art to modify the device of Solovev as modified by Bowen such that the antiseptic dressing functioning in an identical manner to a surgical drape is made from an elastomeric material as disclosed by Podell with a reasonable expectation of success to provide a drape that can be stretched to provide a proper seal and fit to the wound area.

With respect to **claim 27:** Solovev discloses an antiseptic dressing holding the porous pad in place in the wound cavity, thus it is examiner's position that the apparatus of Solovev further comprises an antimicrobial agent in contact with said porous pad. (Page 5, ¶5)

Allowable Subject Matter

12. Claims 5, 16 and 25 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Reasons for Indicating Allowable Subject Matter

13. The following is a statement of reasons for the indication of allowable subject matter: With respect to claims 5 and 25, Solovev does not disclose or suggest any pore size for the average size of the first pores, which would be provided by the adhesive coating defining the outer surface of the pad. Bowen also does not disclose or suggest any pore size. The previously applied prior art reference of McRae discloses a porous pad having an outer surface and inner body as claimed wherein the pores of the outer surface have a first average size within a range that overlaps the claimed range. However, McRae discloses that the pores of the first average size are formed by treating the foam not by adding a layer of adhesive or other material. It is examiner's position that it would not be obvious to one of ordinary skill in the art to modify the apparatus of Solovev such that the porous pad is treated in the manner disclosed by McRae with a treating material or coating to form pores of a first average size on the pad outer surface, as doing so would require either removal of the adhesive or treating the porous pad with the adhesive thereon with the material responsible for effecting the first average pore size. This

could potentially cause an adverse reaction between the treating material and adhesive and/or block the adhesive, thus rendering the adhesive and the pad as a whole unsatisfactory for its intended purpose. With respect to claim 16, Solovev does not disclose or suggest a canister fluidly connected between the porous pad and suction pump, nor does Solovev disclose or suggest a filter. Bowen teaches filters interposed either as part of vacuum source 32 or as part of canister 28, therefore Bowen does not teach one filter between said canister 28 and vacuum source 32. It is examiner's position therefore, that since Solovev does not disclose or suggest a canister or a filter, it would not be obvious to one of ordinary skill in the art to first modify the device of Solovev so as to have a canister, then modify the resulting device so as to further comprise a filter interposed between the canister and the suction pump.

Conclusion

14. Applicant's submission of an information disclosure statement under 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p) on July 23, 2009 prompted the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 609.04(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELANIE J. HAND whose telephone number is (571)272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Melanie J Hand/
Examiner, Art Unit 3761

/Tatyana Zalukaeva/

Supervisory Patent Examiner, Art Unit 3761